

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

Bruce Knowlton	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Blue Cross Blue Shield of Texas, a Division	)	Case No. 4:16-cv-287
of Health Care Service Corporation,	)	
Higginbotham Insurance Agency, Inc. and	)	
Pro Power Providers, LLC	)	
	)	
Defendants	)	
	)	

**APPENDIX TO NOTICE OF REMOVAL**

Defendant Blue Cross and Blue Shield of Texas, a Division of Health Care Service Corporation ("BCBSTX"), respectfully files the following Appendix to Notice of Removal.

- Exhibit 1: Docket Sheet from Case No. 352-284318-16; Bruce Knowlton v. Blue Cross Blue Shield of Texas, et al; In the 352nd District Court, Tarrant County, Texas
  
- Exhibit 2: Original Petition in Cause No. 352-284318-16
  
- Exhibit 3: Original Answer of Blue Cross Blue Shield of Texas in Cause No. 352-284318-16, filed April 18, 2016
  
- Exhibit 4: Original Answer of Higginbotham Insurance Agency, Inc. in Cause No. 352-284318-16, filed April 15, 2016
  
- Exhibit 5: Original Answer of Pro Power Providers, LLC in Cause No. 352-284318-16, filed April 8, 2016

Respectfully submitted,

By: /s/ Andrew F. MacRae  
ANDREW F. MACRAE  
State Bar No. 00784510  
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Attorneys for Defendant  
Blue Cross Blue Shield of Texas

JIMSGTM8

ALL TRANSACTIONS FOR A CASE

Date: 04/22/2016

Time: 10:36

Cause Number: 352-284318-16		Date Filed: 03/11/2016	
BRUCE KNOWLTON		BLUECROSS BLUE SHIELD OF TEXAS, INC., ET AL	
Cause of Action: CONTRACT, CONSUMER/DTPA			
Case Status.....: PENDING			
Filemark	Description	Fee Total	
03/11/2016	PLTF ORIG PETITION	NI	284.00
03/11/2016	COURT COST (PAID) trans #1	Y	284.00
03/11/2016	CIVIL INFO SHEET	UI	0.00
03/11/2016	COPIES - ELECTRONIC	N	7.35
03/11/2016	COURT COST (PAID) trans #4	Y	7.35
03/11/2016	CIT-ISSUED ON BLUECROSS BLUE SHIELD OF TEXAS	NUI	8.00
03/11/2016	CIT-ISSUED ON HIGGINBOTHAM INSURANCE AGENCY	NUI	8.00
03/11/2016	CIT-ISSUED ON PRO POWER PROVIDERS LLC-On	NUI	8.00
03/11/2016	COURT COST (PAID) trans #8	Y	8.00
03/11/2016	COURT COST (PAID) trans #7	Y	8.00
03/11/2016	COURT COST (PAID) trans #6	Y	8.00
03/11/2016	JURY FEE	N	40.00
03/11/2016	COURT COST (PAID) trans #12	Y	40.00
03/11/2016	E-FILE TRANSACTION FEE	N	2.00
03/11/2016	COURT COST (PAID) trans #14	Y	2.00
03/29/2016	CIT Tr# 6 RET EXEC(BLUECROSS BLUE SHIELD OF TEXAS	I	0.00
03/30/2016	CIT Tr# 7 RET EXEC(HIGGINBOTHAM INSURANCE AGENCY	I	0.00
03/30/2016	CIT Tr# 8 RET EXEC(PRO POWER PROVIDERS LLC) On 03/	I	0.00
04/08/2016	DEFN ORIG ANS PRO POWER PROVIDERS LLC	I	0.00
04/08/2016	E-FILE TRANSACTION FEE	N	2.00
04/08/2016	COURT COST (PAID) trans #20	Y	2.00
04/15/2016	DEFN ORIG ANS HIGGINBOTHAM INSURANCE AGENCY INC	I	0.00
04/15/2016	E-FILE TRANSACTION FEE	N	2.00
04/15/2016	COURT COST (PAID) trans #23	Y	2.00
04/18/2016	ORIG ANS BLUE CROSS BLUE SHEILD OF TEXAS	I	0.00
04/18/2016	E-FILE TRANSACTION FEE	N	2.00
04/18/2016	COURT COST (PAID) trans #26	Y	2.00

Total Number Of Records Printed: 27

CITATION

Cause No. 352-284318-16

BRUCE KNOWLTON  
VS.  
BLUECROSS BLUE SHIELD OF TEXAS, INC., ET AL

TO: BLUECROSS BLUE SHIELD OF TEXAS INC.

B/S REG AGENT, RONALD TAYLOR 901 S CENTRAL EXPWY RICHARDSON, TX 75080-

You said DEFENDANT are hereby commanded to appear by filing a written answer to the PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE at or before 10 o'clock A.M. of the Monday next after the expiration of 20 days after the date of service hereof before the 352nd District Court, 100 N CALHOUN, in and for Tarrant County, Texas, at the Courthouse in the City of Fort Worth, Tarrant County, Texas said PLAINTIFF being

BRUCE KNOWLTON

Filed in said Court on March 11th, 2016 Against

BLUECROSS BLUE SHIELD OF TEXAS INC., HIGGINBOTHAM INSURANCE AGENCY INC., PRO POWER PROVIDERS LLC

For suit, said suit being numbered 352-284318-16 the nature of which demand is as shown on said PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE a copy of which accompanies this citation.

RECEIVED  
MAR 24 2016  
Texas Legal

DAVID B JOECKEL, JR  
Attorney for BRUCE KNOWLTON Phone No. (817)924-8600  
Address 1117 W MAGNOLIA AVE FORT WORTH, TX 76104

Thomas A. Wilder, Clerk of the District Court of Tarrant County, Texas. Given under my hand and the seal of said Court, at office in the City of Fort Worth, this the 14th day of March, 2016.

By Vickie Carter Deputy  
VICKIE CARTER

NOTICE: You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 AM. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Thomas A. Wilder, Tarrant County District Clerk, 100 N CALHOUN, FORT WORTH TX 76196-0402

OFFICER'S RETURN

Received this Citation on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_M; and executed at \_\_\_\_\_ within the county of \_\_\_\_\_, State of \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_M on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by delivering to the within named (Def.): \_\_\_\_\_ defendant(s), a true copy of this Citation together with the accompanying copy of PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE, having first endorsed on same the date of delivery.

Authorized Person/Constable/Sheriff: \_\_\_\_\_

County of \_\_\_\_\_ State of \_\_\_\_\_ By \_\_\_\_\_ Deputy

Fees \$ \_\_\_\_\_

State of \_\_\_\_\_ County of \_\_\_\_\_ (Must be verified if served outside the State of Texas)

Signed and sworn to by the said \_\_\_\_\_ before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ to certify which witness my hand and seal of office

(Seal)

County of \_\_\_\_\_, State of \_\_\_\_\_

EXHIBIT 2





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### III.

#### PARTIES

3.1 Plaintiff is an individual and resides in Tarrant County, Texas. The last four digits of his social security number are 7562.

3.2 Defendant BlueCross BlueShield of Texas, Inc. is a corporation duly authorized to do business in the State of Texas. It may be served with process through its registered agent, Ronald Taylor, 901 South Central Expressway, Richardson, Texas 75080.

3.3 Defendant Higginbotham Insurance Agency, Inc. is a corporation duly authorized to do business in the State of Texas. It may be served with process through its registered agent, James R. Reid, 500 West 13<sup>th</sup> Street, Fort Worth, Texas 76102.

3.4 Defendant Pro Power Providers, LLC is a limited liability company duly authorized to do business in the State of Texas. It may be served with process through its registered agent, Robert Schleider, 201 Foch Street, Fort Worth, Texas 76107.

### IV.

#### VENUE

4.1 Venue is proper in Tarrant County, Texas because all or a substantial part of the events giving rise to Plaintiff's claims occurred in Tarrant County.

### V.

#### FACTS

5.1 Plaintiff Bruce Knowlton was an employee of Defendant Pro Power Providers, LLC ("Pro Power") and had health insurance coverage by Defendant BlueCross BlueShield of Texas, Inc. ("BCBS") since July 1, 2014. Defendant Higginbotham Insurance Agency, Inc. ("Higginbotham") was the third party administrator for Pro Power and BCBS in obtaining

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insurance. Plaintiff was diagnosed with Non-Hodgkin's Lymphoma/Double Hit Lymphoma in September 2014. BCBS provided insurance coverage for his treatment. In December 2014, Plaintiff's employer, Pro Power, combined with Circular Energy. At that time, a decision was made to change health insurance providers. Because of Plaintiff's illness, it was determined that his coverage would stay with BCBS. In February 2015, the CFO and President of Pro Power was contacted by Higginbotham to confirm continued health insurance coverage for Plaintiff. On March 31, 2015, Higginbotham confirmed that Plaintiff had health insurance coverage through BCBS. Apparently, the insurance through BCBS was never obtained. BCBS still paid for Plaintiff's treatment in March and April 2015.

5.2 BCBS retroactively cancelled the insurance coverage in June 2015, with the effective date of plan cancellation of March 1, 2015. On July 13, 2015, BCBS sent multiple letters to the University of Texas Southwestern Medical Center ("UTSW") for recovery of payments made for March and April 2015 healthcare expenses on behalf of Plaintiff. It is believed that UTSW repaid BCBS. Thereafter, UTSW began billing Plaintiff for the treatment he received in March and April 2015 at the cash payment rate. This amounts to approximately \$200,000.00. This denial of benefits was wrong and Defendants continue its bad faith denial of benefits.

## VI.

### CAUSES OF ACTION

#### 6.1 **Breach of Contract and Breach of Insurance Policy.**

(a) By denying coverage for his cancer, Defendants breached their insurance policy or their contract with Plaintiff.

(b) Plaintiff has suffered damage for this breach, for which he now sues.

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**6.2 Breach of Duty of Good Faith and Fair Dealing.**

(a) Defendants owed to Plaintiff a duty of good faith and fair dealing in handling his claim because a special relationship existed between them. They breached this duty in taking the action described above. It was reasonably clear that Plaintiff's cancer should have been covered.

(b) Defendants' breach of duty of good faith and fair dealing has directly and proximately cause damage to Plaintiff, for which sum Plaintiff hereby sues Defendants.

**6.2 Violations of the DTPA.**

(a) Plaintiff is a consumer within the meaning of the DTPA because he acquired goods or services by purchase in a transaction that is the subject matter of this lawsuit.

(b) Defendants violated the DTPA and their violations were a producing cause of Plaintiff's damages. Defendants' violations include.

(i) Violating the Texas Insurance Code and rules and regulations issued by the State Board of Insurance.

(ii) Unconscionable action to the Plaintiff.

(1) Taking advantage of the Plaintiff's disparity in knowledge, ability, experience, and capacity to a grossly unfair degree.

(c) Defendants' acts and omissions were done knowingly.

**6.3 Violations of the Texas Insurance Code.**

(a) Plaintiff, who is a person as defined by the Texas Insurance Code, has sustained actual damages caused by Defendants engaging in an act or practice declared in the Texas Insurance Code to be unfair. Specifically, Defendants did not bring about a prompt, fair and equitable resolution of a reasonably clear claim (§541.060(a)(2)(A)) and refused to pay a claim without conducting a reasonable investigation (§541.060(a)(7)).



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**6.4 Negligence and Negligent Misrepresentation.**

(a) Defendants failing to obtain insurance coverage and advising Plaintiff that he had insurance amounts to negligent misrepresentation, which has directly and proximately caused damage to Plaintiff for which sum Plaintiff hereby sues Defendants.

**VII.**

**DAMAGES**

7.1 As a result of the breach of contract, bad faith, negligence, negligent misrepresentation, and statutory violations of Defendants, Plaintiff seeks damages in an amount within the jurisdictional limits of this Court, including, but not limited to: (1) the amount owed to UTSW; (2) past mental anguish and distress; (3) future mental anguish and distress; and (4) past and future loss of earning capacity.

**VIII.**

**PUNITIVE DAMAGES**

8.1 Defendants' conduct was done knowingly with the intent to injure and do harm to Plaintiff. Additionally, Defendants' conduct, when viewed objectively from the standpoint of the Defendants at the time it occurred, involved an extreme degree of risk, considering the probability and magnitude of potential harm to the Plaintiff. Despite this, Defendants proceeded with conscious indifference to the rights and welfare of Plaintiff despite Defendants' actual subjective awareness of the risk involved. Accordingly, Plaintiff is entitled to punitive damages.

**IX.**

**ATTORNEY'S FEES**

9.1 Plaintiff has been required to engage the services of the undersigned attorney and has agreed to pay the undersigned attorney a reasonable fee for his legal services. In accordance

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with the DTPA and the Texas Insurance Code and because this is a breach of contract claim, Plaintiff is entitled to recover his attorney's fees against Defendants through the trial phase of this action and, if necessary through the appellate process.

**X.**

**JURY DEMAND**

10.1 In accordance with Rule 216 of the Texas Rules of Civil Procedure, Plaintiff requests a jury trial and that this case be set on the Court's jury docket. In support of this request, Plaintiff would show that the appropriate jury fee is being paid to the clerk of the Court with the filing of this Petition.

**XI.**

**REQUEST FOR DISCLOSURE**

11.1 Pursuant to Rule 194 of the Texas Rules of Civil Procedure, you are requested to disclose, within fifty (50) days of service of this request, the information or material described in Rules 194.2(a) – (l) of the Texas Rules of Civil Procedure.

**XII.**

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendants be cited to appear and answer and that on final trial Plaintiffs have:

- (a) Judgment against Defendants for damages in an amount in excess of the minimum jurisdictional limits of this Court;
- (b) Prejudgment and post-judgment interest as provided by law;
- (c) Costs of suit; and
- (d) Such other and further relief to which Plaintiff may be entitled in law or in equity.

352-284318-16

Respectfully submitted,

/s/ David B. Joeckel, Jr.  
David B. Joeckel, Jr.  
State Bar No. 10669700

THE JOECKEL LAW OFFICE  
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ATTORNEY FOR PLAINTIFF

CAUSE NO. 352-284318-16

BRUCE KNOWLTON	)	IN THE DISTRICT COURT
	)	
Plaintiff	)	
v.	)	
	)	TARRANT COUNTY, TEXAS
BLUE CROSS BLUE SHIELD	)	
OF TEXAS, HIGGINBOTHAM	)	
INSURANCE AGENCY, INC. and	)	
PRO POWER PROVIDERS, LLC	)	
	)	
Defendant	)	352 <sup>ND</sup> JUDICIAL DISTRICT

**ORIGINAL ANSWER**

Defendant Blue Cross Blue Shield of Texas, a division of Health Care Service Corporation, a Mutual Legal Reserve Company ("BCBSTX"), incorrectly named as Blue Cross Blue Shield of Texas, Inc., files the following Original Answer to Plaintiff's Original Petition.

**General Denial**

BCBSTX enters a General Denial pursuant to Rule 92.

WHEREFORE, PREMISES CONSIDERED, Defendant Blue Cross Blue Shield of Texas requests that Plaintiff take nothing by his suit, and that BCBSTX be awarded its costs of court. BCBSTX further requests such other relief, both legal and equitable, to which it may show itself justly entitled.



Respectfully submitted,

By: /s/ Andrew F. MacRae

ANDREW F. MACRAE  
*State Bar No. 00784510*  
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Fax: (512) 637-1583  
[andrew@lpfirm.com](mailto:andrew@lpfirm.com)

Attorney for Defendant  
Blue Cross Blue Shield of Texas

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Original Answer has been forwarded to all parties and/or counsel of record, via facsimile and/or electronic filing, this 18th day of April, 2016, as follows:

David B. Joeckel, Jr.  
The Joeckel Law Office  
219 South Main Street, Suite 301  
Fort Worth, Texas 76104

Daniel A. Ortiz  
Giana Ortiz  
The Ortiz Law Firm  
1304 West Abram St., Suite 100  
Arlington, Texas 76013

**Kevin L. Sewell**  
Martin, Disiere, Jefferson & Wisdom, LLP  
Tollway Plaza One  
16000 N. Dallas Parkway, Suite 800  
Dallas, Texas 75248

/s/ Andrew F. MacRae  
Andrew F. MacRae

**CAUSE NO. 352-284318-16**

<b>BRUCE KNOWLTON</b>	§	<b>IN THE DISTRICT COURT</b>
	§	
<b>Plaintiff,</b>	§	
	§	
<b>vs.</b>	§	<b>TARRANT COUNTY, TEXAS</b>
	§	
<b>BLUECROSS BLUESHIELD OF TEXAS,</b>	§	
<b>INC., HIGGINBOTHAM INSURANCE</b>	§	
<b>AGENCY, INC., and</b>	§	
<b>PRO POWER PROVIDERS, LLC</b>	§	
	§	
<b>Defendants.</b>	§	<b>352nd JUDICIAL DISTRICT</b>

**ORIGINAL ANSWER OF DEFENDANT  
HIGGINBOTHAM INSURANCE AGENCY, INC.**

**COMES NOW** Defendant Higginbotham Insurance Agency, Inc., files this Original Answer and would respectfully show the Court as follows:

**I.**

**GENERAL DENIAL**

As authorized by Rule 92 of the Texas Rules of Civil Procedure, Higginbotham generally denies the allegations contained in Plaintiff's Original Petition, as well as any other amended or supplemental petition filed hereafter, and demands strict proof by a preponderance of the evidence of all Plaintiff's allegations.

**WHEREFORE, PREMISES CONSIDERED,** Higginbotham Insurance Agency, Inc. prays that Plaintiff takes nothing by reason of this suit, that it recover its fees and costs, and for such other and further relief, special or general, at law or in equity, to which it may show itself justly entitled to receive.

Respectfully submitted,

**MARTIN, DISIERE, JEFFERSON & WISDOM, LLP**

By: /s Kevin L. Sewell

Kevin L. Sewell  
State Bar No. 00789619  
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Matthew S. Paradowski  
State Bar No. 24027588  
E-Mail: paradowski@mdjwlaw.com  
16000 N. Dallas Parkway, Suite 800  
Dallas, Texas 75248  
Telephone: (214) 420-5500  
Facsimile: (214) 420-5501

**ATTORNEYS FOR DEFENDANT  
HIGGINBOTHAM INSURANCE  
AGENCY, INC.**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing document was served upon all attorneys of record and/or pro se parties in the above-captioned cause pursuant to TEX. R. CIV. P. 21a on this the 15th day of April, 2016 by:

Hand Delivery	_____
Certified Mail	_____
Fax Transmittal:	_____
Electronic Mail:	<u>          X          </u>

/s Kevin L. Sewell

Kevin L. Sewell

**CAUSE NO. 352-284318-16**

<b>BRUCE KNOWLTON</b>	§	<b>IN THE DISTRICT COURT</b>
<b>Plaintiff</b>	§	
	§	
	§	
<b>v.</b>	§	<b>TARRANT COUNTY, TEXAS</b>
	§	
	§	
<b>BLUECROSS BLUESHIELD</b>	§	
<b>OF TEXAS, INC., HIGGINBOTHAM</b>	§	
<b>INSURANCE AGENCY, INC., and</b>	§	
<b>PRO POWER PROVIDERS, LLC</b>	§	<b>352nd JUDICIAL DISTRICT</b>

**DEFENDANT PRO POWER PROVIDERS, LLC'S ORIGINAL ANSWER**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW PRO POWER PROVIDERS, LLC ("Pro Power"), a Defendant herein, and makes and files its Original Answer to Plaintiff's Original Petition and would show the Court as follows:

**I.**

Pro Power denies each and every, all and singular, the allegations contained in Plaintiff's Original Petition, and demands strict proof thereof. By this denial, Pro Power respectfully requests that the Court require Plaintiff to prove his cause of action, and any and all amendments thereto, by a preponderance of the evidence as is required by the Texas Rules of Civil Procedure, the Texas Constitution and the laws of the State of Texas.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiff take nothing by his suit and that Defendant go hence with his costs, and for such other and further relief to which Defendant may be justly entitled.



Respectfully submitted,

THE ORTIZ LAW FIRM  
1304 West Abram Street, Suite 100  
Arlington, Texas 76013  
817-861-7984 Telephone  
817-861-8909 Facsimile

By: /s/ Daniel A. Ortiz  
DANIEL A. ORTIZ  
State Bar No. 15323100  
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GIANA ORTIZ  
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[gortiz@danielortizlaw.com](mailto:gortiz@danielortizlaw.com)

ATTORNEYS FOR DEFENDANT  
PRO POWER PROVIDERS, LLC

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing instrument has been forwarded to the following counsel of record on the 8th day of April, 2016 via eservice:

David B. Joeckel, Jr.  
The Joeckel Law Office  
219 South Main Street, Suite 301  
Fort Worth, Texas 76104  
Attorney for Plaintiff  
[dbj@joeckellaw.com](mailto:dbj@joeckellaw.com)

/s/ Daniel A. Ortiz  
Daniel A. Ortiz